



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision Request for Variance Frederick Surrette III/Map 98, Lot 96

December 15, 2010

Applicant: Frederick Surrette III
P.O. Box 347
Moultonborough, NH 03254

Location: 22 Leisure Drive, Moultonborough, NH (Tax Map 98, Lot 96)

On December 15, 2010 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of Frederick Surrette III (hereinafter referred to as the "Applicant" and/or "Owner") for a Variance from Article III (B)(1) to allow for relief from the twenty (20) foot side setback on the existing house and deck for the parcel located in the Agricultural Residential (AR) Zoning District.

Based on the application, testimony given at the hearings, and additional documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 22 Leisure Drive (Tax Map 98, Lot 96).
- 2) The applicant is the owner of record for the lot.
- 3) The lot is located in the Agricultural Residential (AR) Zoning District.
- 4) The applicant waived their right to a five (5) member Board of Adjustment, there being only four (4) members present and able to review the application on December 15th.
- 5) The proposal requests relief after the fact for a deck intrusion into the existing twenty (20) foot side setback.
- 6) The house was constructed on the non-conforming lot in 1987 and the deck was constructed in 2000.
- 7) The applicant purchased the house and attached deck in 2003.
- 8) The applicant is selling the property and has a Purchase and Sale Agreement with a perspective buyer for the site, contingent upon relief for the encroachment being granted.

- 9) The applicant also has a signed Purchase and Sale Agreement for a new house, which he is purchasing, which is in jeopardy due to the issue of relief being needed for the encroachment of the subject property.
- 10) A letter from the Code Enforcement Officer in 2000 and addressed to the previous owner of the lot indicated that there may be an issue with the deck's location and that it may require a Variance if it is found to be located within the side setback.
- 11) During the Public Hearing, one member of the public spoke in favor of the application. They further stated that they were the realtor for the applicant and that the issue of the setback was only discovered when the mortgage lender for the prospective purchasers of the property had a survey done for the site.
- 12) An e-mail was received by an abutter objecting to the application.
- 13) Granting the Variance will not be contrary to the public interest as the location of the structure is not infringing on the rights of others to the use of their properties and the intrusion is not severe.
- 14) Granting the Variance is consistent with the spirit of the Ordinance as the proposal is allowing relief as indicated that it may need to be granted by the letter of the Code Enforcement officer.
- 15) By granting the Variance, substantial justice is done.
- 16) Granting the Variance does not diminish the value of surrounding properties as the neighborhood is largely comprised of single family homes on similar-sized lots.
- 17) Special conditions exist such that a literal enforcement of the provisions of the Ordinance will result in unnecessary hardship as the lot size was determined prior to the current zoning ordinance being in effect and the location of the structure in relation of the deck to the lot line was not known until after the applicant had purchased the house, and the deck had been built by the previous owner.

The Board of Adjustment closed the Public Hearing on December 15, 2010. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of four (4) in favor (Stephens, Nolin, Roseberry, Zewski), none (0) opposed, to **GRANT** the request for variance.

This decision shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.

Robert H. Stephens
Chairman, Zoning Board of Adjustment

Date _____